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			3751	

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/727,538

Applicant(s)

BRUNELLE ET AL.

Examiner

Khoa D. Huynh

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☒ Certified copies of the priority documents have been received in Application No. 10/173,637.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "19" has been used to designate "the air stream", "the air return orifice" and "the user person" (specification, pages 14 & 19), and reference character "21" has been used to designate both "slotted return orifices" and "the injecting orifices" (specification, pages 17-18).

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, more than one air return orifices as recited in claim 1, and more than two halogen light sources must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The disclosure is objected to because of the following informalities: page 1, line 4, after the recitation “June 19, 2002” insert --, now US Patent No. 6,681,417 B2--.
Page 18, line 1, the recitation “channel 17 and 17’ ” should be changed to read -- channels 17 and 17’--. And page 21, paragraph [0063], the recitation “convection throughs 39” should be changed to read --convection troughs 39--.

Appropriate correction is suggested.

Claim Objections

4. Claims 2-12 are objected to because of the following informalities: line 1, the recitation “A top wall assembly” should be changed to read --The top wall assembly--.
Appropriate correction is suggested.

5. Claims 14-28 are objected to because of the following informalities: line 1, the recitation “A therapeutic shower enclosure” should be changed to read --The therapeutic shower enclosure--. Appropriate correction is suggested.

6. Claim 1 is objected to because of the following informalities: line 6, the recitation “a shower enclosure” should be changed to read --said shower enclosure--.
Appropriate correction is suggested.

7. Claim 2 is objected to because of the following informalities: line 8, the recitation “a shower enclosure” should be changed to read --said shower enclosure--; and line 10,

the recitation "a user person standing" should be changed --the person standing--.

Appropriate correction is suggested.

8. Claims 5, 7, 9 and 19-26 are objected to because of the following informalities: the recitation "a user person" should be changed to read --the person--. Appropriate correction is suggested.

9. Claim 11 is objected to because of the following informalities: line 6, the recitation "a user person 9to" should be changed to read --the person to--. Appropriate correction is suggested.

10. Claim 14 is objected to because of the following informalities: line 6, the recitation "at least one air injection orifice" should be changed to read --said two of said air injection orifices--. Appropriate correction is required since claim 13 also recites "two of said air injection orifices".

11. Claim 18 is objected to because of the following informalities: the recitation "a user's skin" should be changed to read --the user's skin--. Also, the recitation "said air injection orifice is" should be changed to read --said two of said air injection orifices are--. Appropriate correction is suggested.

12. Claim 19 is objected to because of the following informalities: lines 1-2, the recitation "a claimed in claim 1" should be changed to read --as claimed in claim 13--. Appropriate correction is suggested.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 1 and 3, as presently understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Filipponi (5293653).

Regarding claim 1, the Filipponi reference discloses an assembly for installing on the top of a shower stall. The assembly includes a top wall member (Fig. 1) having an air distribution channel (at 7) in communication with an air blower (col. 3, lines 19-27), an air return orifice (at 2c; col. 2, lines 43-45), and an air injection orifice (at 2c; col. 2, lines 43-45) adapted to communicate with the shower stall whereby to create a stream of circulating air in the stall. The assembly also includes heating means (col. 3, lines 19-27) in the channel for heating air to provide hot air to cause a user's body to increase its internal temperature to precipitate perspiration.

The Filipponi reference DIFFERS in that it does not specifically disclose that the temperature of the heated air is of up to about 50 degree C to 75 degree C as claimed. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a temperature of up to about 50 degree C to 75 degree C for the heated air since discovering an optimum degree of temperature for heated air involves only routine experiment or trial and error for one of skill in the art.

Regarding claim 3, the assembly also includes a filter support frame (at 14) that is obviously capable of filtering impurities from air. The support frame is

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mounted adjacent the air return orifice (at 2c) and supported above a portion of a water deflector cover (at 2,3). The support frame is obviously included a filter, and the filter is being accessible by removal of the cover (when element 3 is lifted).

15. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Filipponi (as discussed supra) in view of Poss (4277855).

The modified Filipponi reference DIFFERS in that it does not specifically include a light source and a control as claimed. Attention, however, is directed to the Poss reference which discloses a portable sauna having a sun light or an intense clear light source (94) located at the top of the sauna and control means (at 98) to control the light source. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Filipponi reference by employing a light source and control mean, in view of the teaching of Poss, in order to supply ultraviolet radiation (a lumino-therapeutic effect) for body tanning purposes.

16. Claims 1-4, 7, 8, 13-20, 24 and 28, as presently understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Jarosch (5099587) in view of Poss (4277855).

Regarding claim 1, the Jarosch reference discloses a bathroom dryer assembly. The assembly includes a top wall member (Fig. 1) having an air distribution channel (at 20,30) in communication with an air blower (at 21), an air inlet orifice (at 27), and an air injection orifice (at 26,31,14,50) adapted to

communicate with the shower stall (at 10) whereby to create a stream of circulating air in the stall. The assembly also includes heating means (at 40) in the channel for heating air to provide hot air to cause a user's body to increase its internal temperature to precipitate perspiration.

The Jarosch reference DIFFERS in that it does not specifically disclose that air inlet orifice is an air return orifice as claimed. Attention, however, is directed to the Poss reference which discloses a sauna having an air blower and air heating means for providing heated air into the interior of the sauna (col. 4, lines 52-68; col. 5, lines 1-6). The Poss reference also discloses an air inlet opening or orifice (at 81) for re-circulating air from within the sauna. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Jarosch air inlet orifice to become an air return orifice, in view of the teaching of Poss, in order to re-circulate the heated air and thus, minimize the use of the heating means and reduce the cost of the electricity used.

The Jarosch reference also DIFFERS in that it does not specifically disclose that the temperature of the heated air is of up to about 50 degree C to 75 degree C as claimed. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a temperature of up to about 50 degree C to 75 degree C for the heated air since discovering an optimum degree of temperature for heated air involves only routine experiment or trial and error for one of skill in the art.

Regarding claim 2, as schematically shown in Figure 1, the top wall member defines a right corner area with respect to the wall adjacent to the wall (11c) of the shower stall. And the air return orifice (at 27) is disposed in the corner area (Fig. 9). The modified Jarosch reference also discloses that there are two injecting orifices (at 26,31,14,50) disposed spaced adjacent a respective one of opposed sides of the top wall member forwardly of the corner area whereby they create the stream of hot air having a downward path to a bottom wall of the shower stall thereof and up along the corner area to the return orifice.

Regarding claim 3, the modified Jarosch reference also discloses that the assembly also includes an air filter support frame (the portion of the element 27 that supports the filter) that is mounted adjacent the air return orifice and supported above a cover (col. 5, lines 45-48, the valve device that is obviously capable of being used as a cover, when in closed position, to deflect any moisture from the interior of the sauna).

Regarding claim 4, as schematically shown in Figures 15A-15D, the top wall member is obviously a molded shell, and the air distribution channel (at 20,30) is formed in the shell. The air distribution channel has an inlet end (at 25) surrounding at least part of an impeller of the air blower and two branch channels (at 26,30) leading to a respective one of the injecting orifices. The injecting orifices (at 26,31,14,50) are being elongated slots (about 50) formed in the top wall member.

Regarding claim 7, the modified Jarosch reference also DIFFERS in that it does not specifically include a light source and a control as claimed. Attention, however, is also directed to the Poss reference which discloses a portable sauna having a sun light or an intense clear light source (94) located at the top of the sauna and control means (at 98) to control the light source. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a light source and control mean for the Jarosch assembly, in view of the teaching of Poss, in order to supply ultraviolet radiation (a lumino-therapeutic effect) for body tanning purposes.

Regarding claim 8, the modified Jarosch reference also DIFFERS in that it does not specifically include two halogen light sources as claimed. Attention, however, is also directed to the Poss reference which discloses a portable sauna having incandescent or halogen light sources (93) located at the top of the sauna. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ two halogen light sources for the Jarosch assembly, in view of the teaching of Poss, in order to supply light within the sauna.

Regarding claim 13, the Jarosch reference discloses a bathroom dryer assembly. The assembly includes a top wall member (Fig. 1) having an air distribution channel (at 20,30) in communication with an air blower (at 21), an air inlet orifice (at 27), and an air injection orifice (at 26,31,14,50) adapted to communicate with the shower stall (at 10) whereby to create a stream of

circulating air in the stall. The assembly also includes heating means (at 40) in the channel for heating air to provide hot air to cause a user's body to increase its internal temperature to precipitate perspiration.

The Jarosch reference DIFFERS in that it does not specifically disclose that air inlet orifice is an air return orifice as claimed. Attention, however, is directed to the Poss reference which discloses a sauna having an air blower and air heating means for providing heated air into the interior of the sauna (col. 4, lines 52-68; col. 5, lines 1-6). The Poss reference also discloses an air inlet opening or orifice (at 81) for re-circulating air from within the sauna. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Jarosch air inlet orifice to become an air return orifice, in view of the teaching of Poss, in order to re-circulate the heated air and thus, minimize the use of the heating means and reduce the cost of the electricity used.

The Jarosch reference also DIFFERS in that it does not specifically disclose that the temperature of the heated air is of up to about 50 degree C to 75 degree C as claimed. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a temperature of up to about 50 degree C to 75 degree C for the heated air since discovering an optimum degree of temperature for heated air involves only routine experiment or trial and error for one of skill in the art. As schematically shown in Figure 1, the air return orifice (at 27) is disposed in the top wall member

substantially midway between the side walls of the shower stall (Fig. 9). The modified Jarosch reference also discloses that there are two injecting orifices (at 26,31,14,50) disposed spaced adjacent a respective one of opposed sides of the top wall member forwardly of the corner area whereby they create the stream of hot air having a downward path to a bottom wall of the shower stall thereof and up along the corner area to the return orifice.

Regarding claim 14, the air distribution channel (at 20,30) is mounted in the top wall, and the air return orifice and two injection orifices are also being provided in the top wall member.

Regarding claim 15, as schematically shown in Figure 9 of Jarosch, the air blower is mounted in the portion of the distribution channel adjacent a single one of the air return orifice (at 27).

Regarding claim 16, the modified Jarosch reference also DIFFERS in that it does not specifically disclose that the air is heated to a temperature of up to about 31 degree C to 40 degree C as claimed. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a temperature of up to about 50 degree C to 75 degree C for the heated air since discovering an optimum degree of temperature for heated air involves only routine experiment or trial and error for one of skill in the art.

Regarding claim 17, the modified Jarosch reference also DIFFERS in that it does not specifically disclose that period of heating time is about 20 minutes, a time delay of about 5 minutes for the closure having a volume of about 62 cubic

feet as claimed. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a temperature heating time of about 20 minutes, a time delay of about 5 minutes for the closure having a volume of about 62 cubic feet since discovering an optimum degree of time for heating a volume of air within a enclosure involves only routine experiment or trial and error for one of skill in the art.

Regarding claim 18, as schematically shown in Figure 15A, the each of the air injection orifice (about 50) is of a predetermined size. The modified Jarosch reference also DIFFERS in that it does not specifically disclose that the air blower having a displacement capacity of 65 cfm and the air displacement is not exceed 0.2 m/s as claimed. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ an air blower having a displacement capacity of 65 cfm with an air displacement not exceed 0.2 m/s since the use of such air blower would be considered a mere choice of a preferred air blower on the basis of its intended used.

Regarding claim 19 (assumed that it depends on claim 13), as schematically shown in Figure 15A, the air injection orifices (about 50) are elongated slot orifices dimensioned to obviously allow an accelerated downward air stream adjacent the sidewalls of the shower stall at a pressure sufficient to reach the bottom wall and to create a return air stream comfortable to the user.

Regarding claim 20, the modified Jarosch reference also DIFFERS in that it does not specifically disclose the dimension of the elongated slots of

approximately 6 by $\frac{3}{4}$ inches and the diameter of the circular air return orifice of 3 inches as claimed. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such dimensions for the slots and the circular air return orifice since discovering an optimum value of the dimensions of the slots and the diameter of a circular opening involves only routine experiment or trial and error for one of skill in the art. Furthermore, it would also have been obvious to one of ordinary skill in the art at the time the invention was made to employ an air blower having a displacement capacity of 65 cfm with an air displacement not exceed 0.2 m/s since the use of such air blower would be considered a mere choice of a preferred air blower on the basis of its intended used.

Regarding claim 24, the modified Jarosch reference also DIFFERS in that it does not specifically include a light source and a control as claimed. Attention, however, is also directed to the Poss reference which discloses a portable sauna having a sun light or an intense clear light source (94) located at the top of the sauna and control means (at 98) to control the light source. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a light source and control mean for the Jarosch assembly, in view of the teaching of Poss, in order to supply ultraviolet radiation (a lumino-therapeutic effect) for body tanning purposes.

Regarding claim 28, it would have been obvious to have the air return orifice of circular contour (opening 80 in Poss appears to have a circular

contour), and an air deflector disc (Jarosch col. 5, lines 45-48, the valve device; Poss element 83) obviously can be aligned concentrically with the air return orifice and spaced at a predetermined distance thereof.

17. Claims 5, 6, 9-11, 21-23, 25 and 26, as presently understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Jarosch (as discussed supra) in view of Gedouin (6782566) and Ishikawa et al. (GB 1566470).

Regarding claims 5, 6, 9-11, 21, 22, 25 and 26, the modified Jarosch reference discloses an intense clear light source (94 in Poss) located at the top of the sauna and control means (at 98) to control the light source.

The modified Jarosch reference DIFFERS in that it does not specifically include a colored light source as claimed. Attention, however, is directed to the Gedouin reference which discloses a therapeutic enclosure having colored light sources (27) to subject the user light treatment. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modified the modified Jarosch reference by employing colored light sources, in view of the teaching of Gedouin, in order to provide the user with color therapy for stimulation and relaxation.

The modified Jarosch reference also DIFFERS in that it does not specifically include an ion-generating source and an ozone generator as claimed. Attention, however, is directed to the Ishikawa et al. reference which discloses an air cleaning device having an ion-generating source (12) and an ozone generator (10) to subject the air to the cleaning treatment. Therefore, it would have been

obvious to one of ordinary skill in the art at the time the invention was made to modified the modified Jarosch reference by employing an ion-generating source and an ozone generator, in view of the teaching of Ishikawa et al., in order to generate negative ion to trap air born contaminants and to provide clean air.

Regarding claim 23, the modified Jarosch reference discloses that the colored light sources include the red and blue lights (Gedouin's abstract). Even though the modified Jarosch reference does not specifically include a green light as claimed, it is well within one of ordinary skill in the art to recognize that light therapy has been long practiced in accordance with many cultures and places (see evident cited US 6623511). Thus, employing an additional green light source would have been obvious to in order to treat the heart and the circulatory system of the user since green color has been known to associate with the human heart and the circulatory system.

18. Claims 12 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Jarosch (as discussed supra) in view of Filipponi (5293653).

The modified Jarosch reference also DIFFERS in that it does not specifically include a water atomizer as claimed. Attention, however, is directed to the Filipponi reference which discloses an assembly for the production of steam having a vaporizer or atomizer (at 8) mounted in the top wall member and is in communication with the interior of shower stall. The vaporizer is controlled by a controller (at 17). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modified the modified

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Jarosch reference by employing a water atomizer with a controller, in view of the teaching of Filipponi, in order to generate fine mist or steam and allow the user to have a choice of either dry air or steam bath.

Double Patenting

19. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

20. Claims 1 and 13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 33 and 40 of U.S. Patent No. 6,681,417 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims being examined are merely broader than the patented claims.

21. Claims 2-12 and 14-28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2-32 and 34-39 of U.S. Patent No. 6,681,417 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims being examined and the patented claims have similar interpretations.

Conclusion

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Altman et al. was cited to show a combination steam bath and shower. Paesler was cited to show a sauna having sidewalls forming a right angle corner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Khoa D. Huynh
Primary Examiner
Art Unit 3751